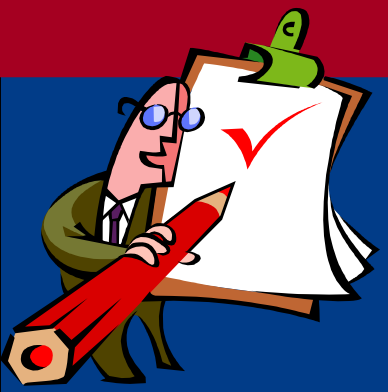
U.S. General Services Administration

WELCOME

SA and DoD Interagency Acquisition

General Services Administration

Department of Defense



Discussion Areas

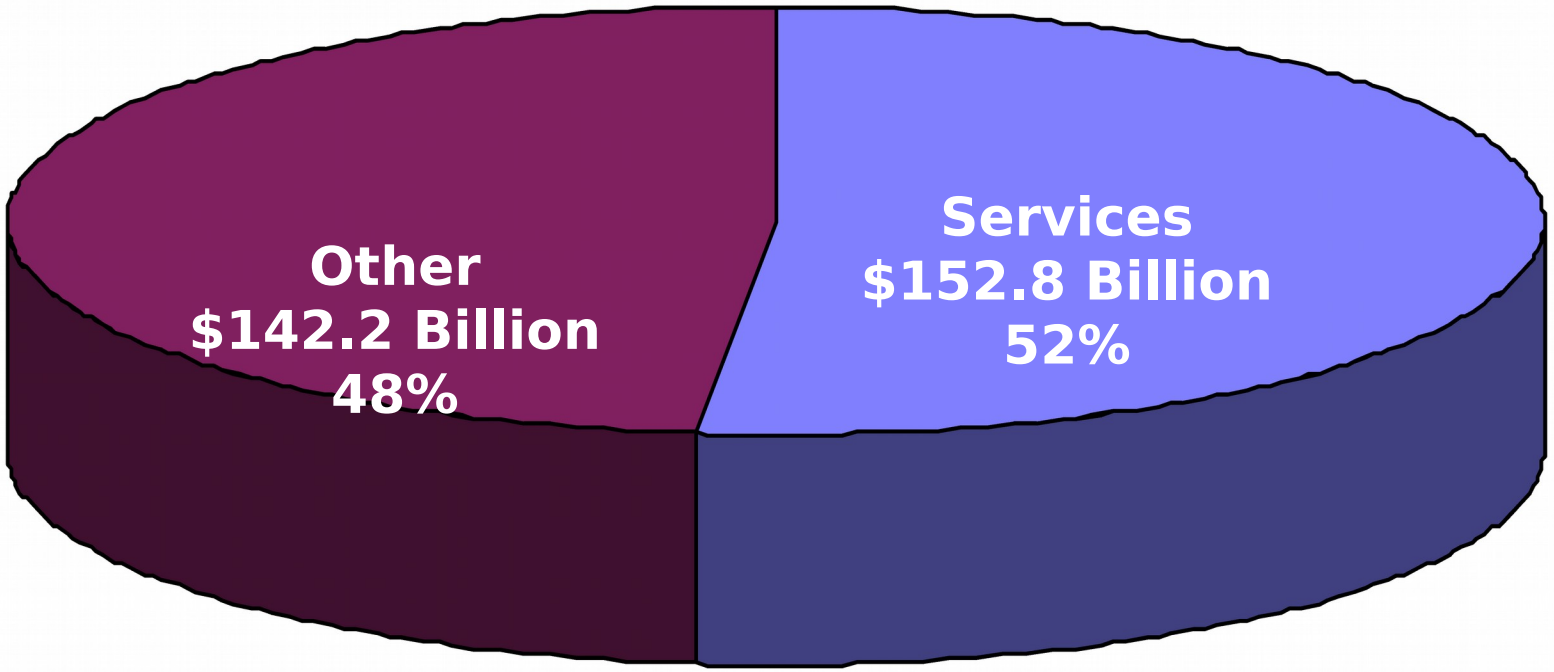
- Definition of Direct and Assisted Acquisitions
- An overview of federal fiscal law, interagency funds transfers, and interagency acquisitions
- DoD and GSA policies regarding assisted acquisitions
- Assisted Acquisition References For DoD

Background

- GSA and DoD signed a Memorandum of Agreement (MOA), December 2006
- DoD and GSA are working together to achieve Acquisition Excellence

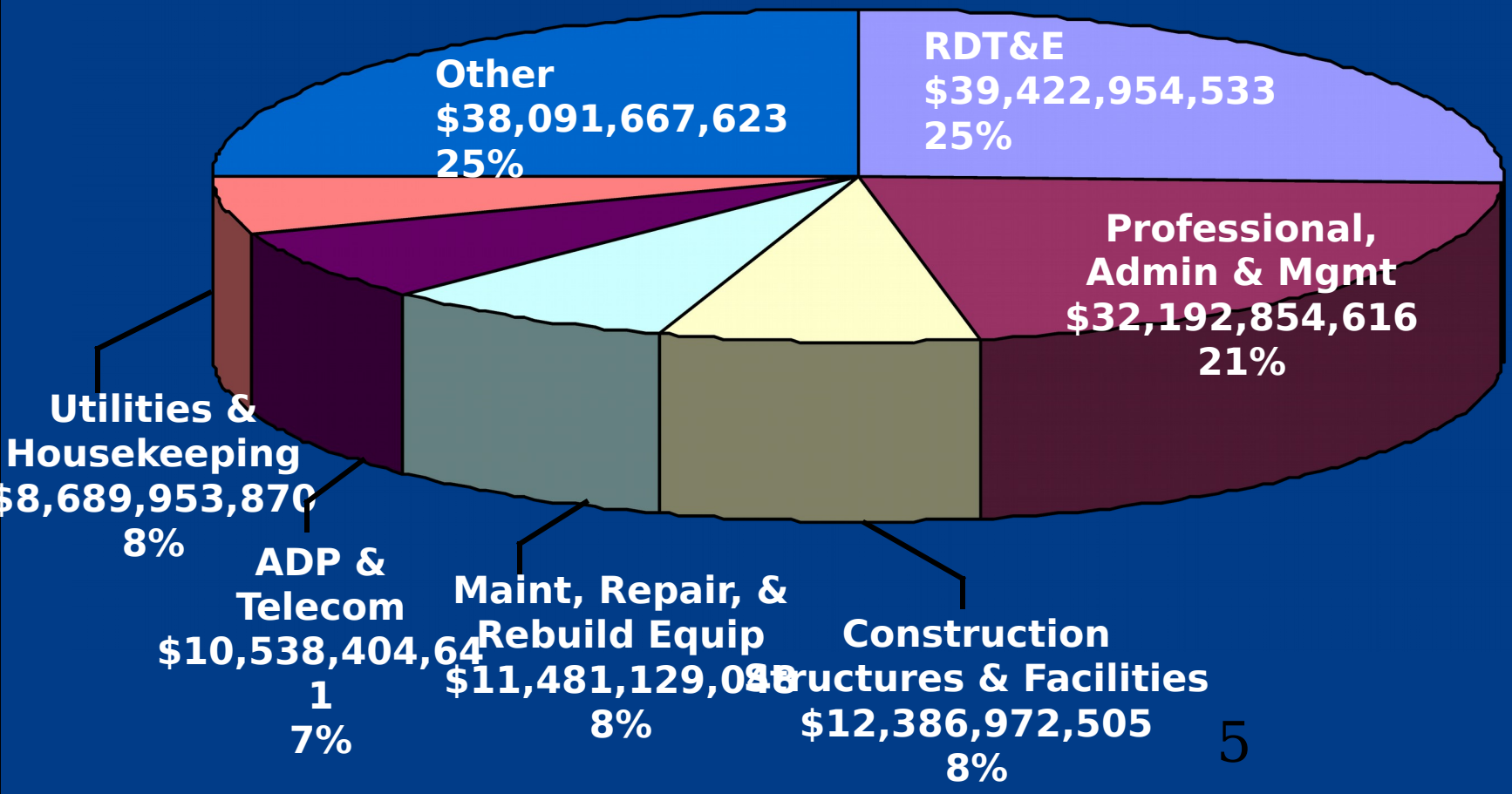
DoD Total Spend and Services Spend

FY 2006 Total DoD Spend: $295 Billion
FY 2006 DoD Services: $152.8 Billion



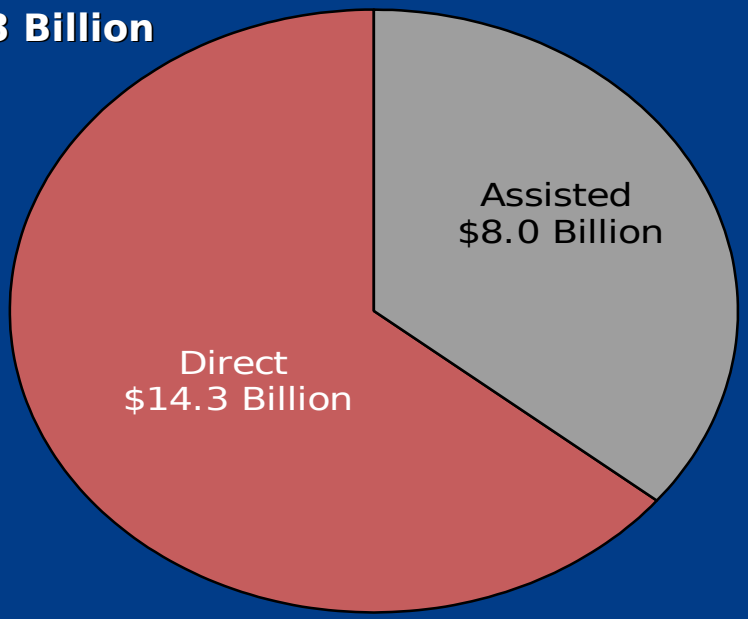
FY 2006 DoD Spending on Services

Total DoD Spend: $295 Billion
DoD Services Spend: $152.8 Billion



Total interagency Spend Through Direct and Assisted Acquisitions

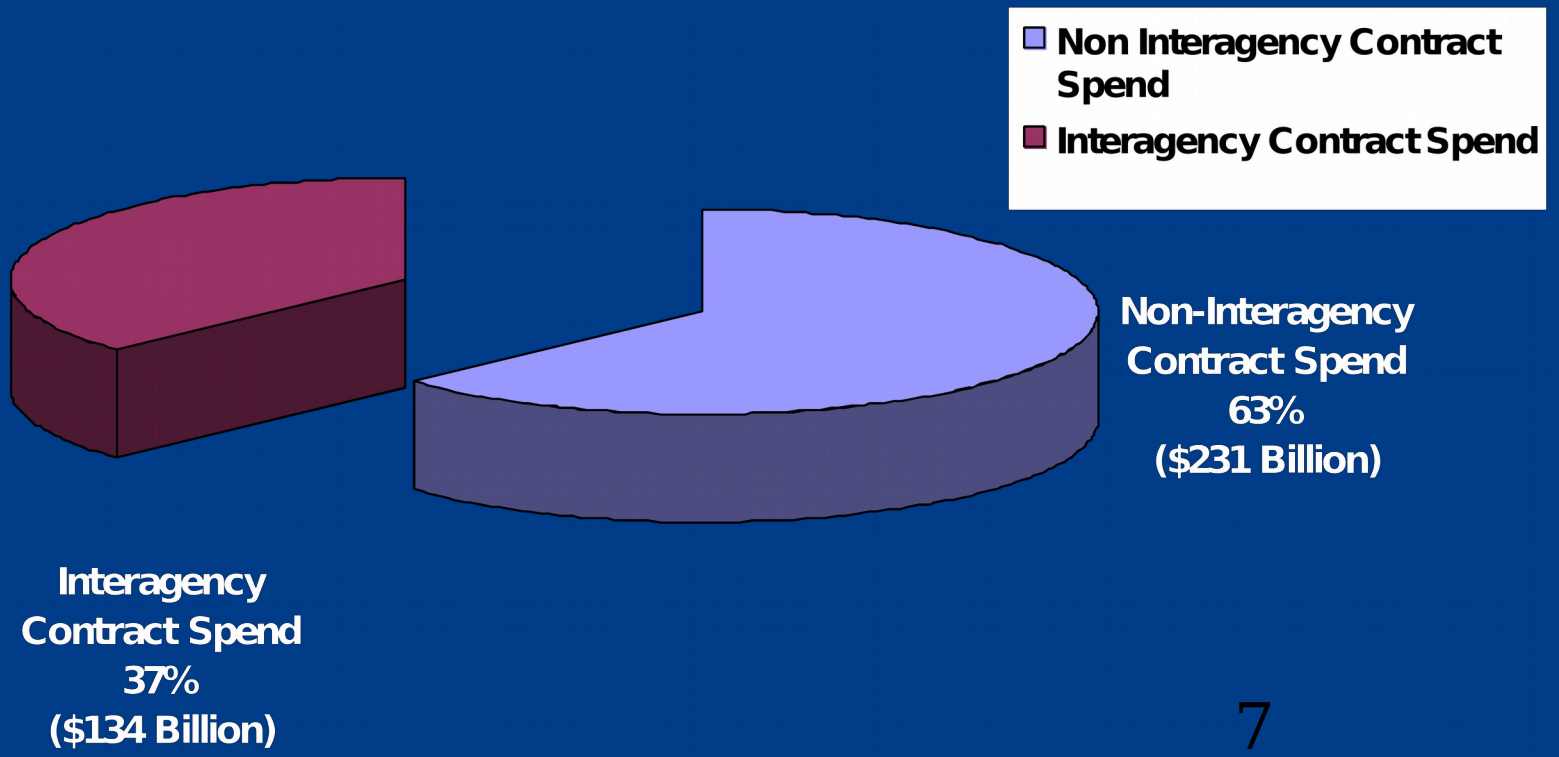
TOTAL INTERAGENCY SPEND DIRECT AND ASSISTED (FY05)
TOTAL SPEND = $22.3 Billion



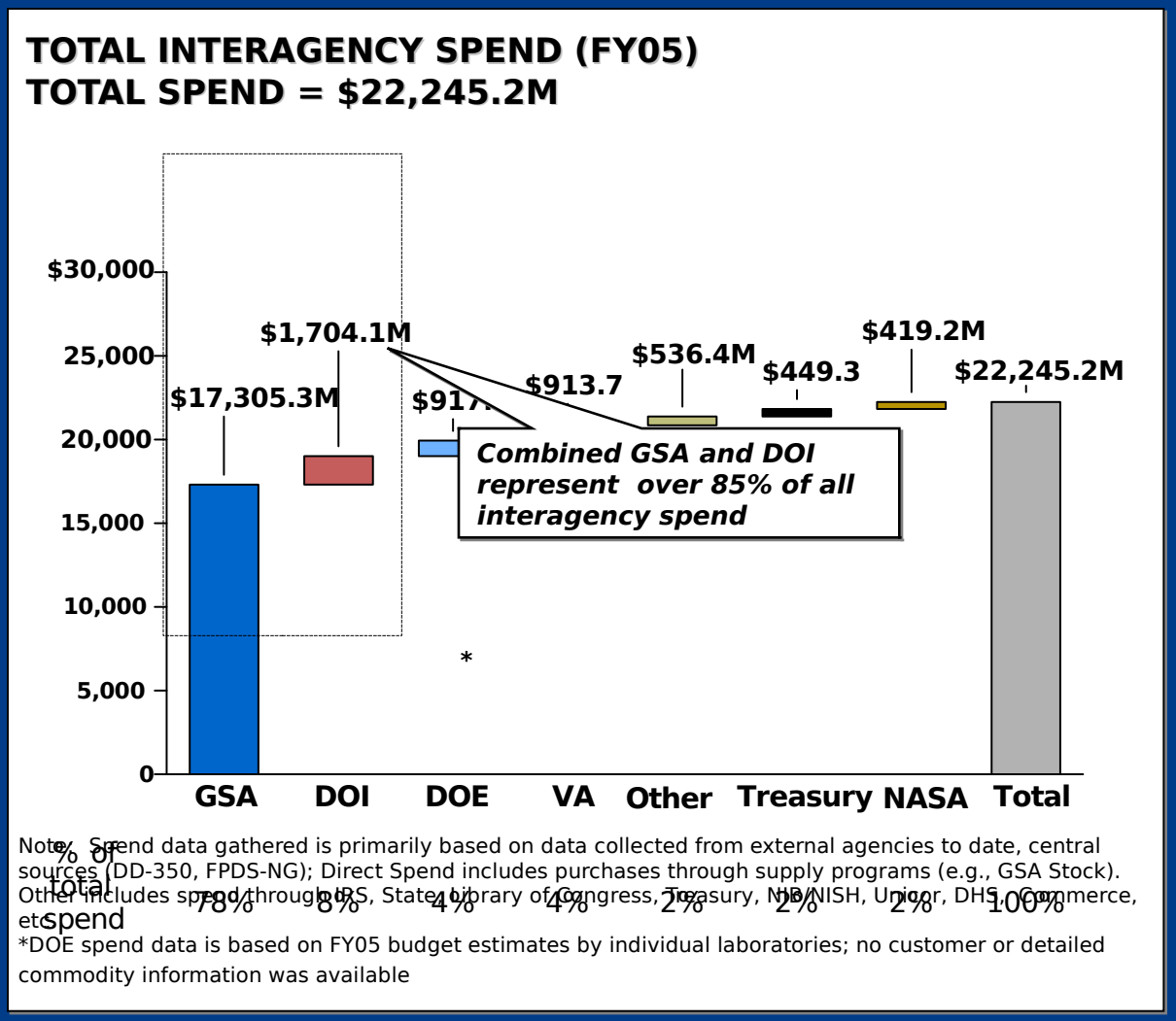
Note: Spend data gathered is primarily based on data collected from external agencies to date, central sources (DD-350, FPDS-NG); Direct Spend includes purchases through supply programs (e.g., GSA Stock); DOE spend data is based on FY05 budget estimates by individual laboratories; no customer or detailed

Interagency Acquisition Spend

Percent of Governmentwide Spend on Interagency Contract Vehicles for FY 2005 (Total Government Spend=$365 B)


Non Interagency Contract Spend
Interagency Contract Spend
Non-Interagency Contract Spend 63% ($231 Billion)
Interagency Contract Spend 37% ($134 Billion)

GSA and DOI Account for Nearly 90% of Total Interagency



Note: Spend data gathered is primarily based on data collected from external agencies to date, central sources (DD-350, FPDS-NG); Direct Spend includes purchases through supply programs (e.g., GSA Stock). Other includes spend through DRS, State, Library of Congress, Treasury, NIB/NISH, Unicor, DHS, Commerce, etc.

*DOE spend data is based on FY05 budget estimates by individual laboratories; no customer or detailed commodity information was available

KEY FINDINGS

- GSA represents nearly 78% of total interagency spend
- DOI represents nearly 8% of total interagency spend
- Beyond the two largest agencies, there is still a significant amount of spend filtering through other agencies

What is a "Direct Acquisition"?

- **DFARS 217.7801**
  - "[A] task or delivery order placed by a DoD official under a contract awarded by a non-DoD agency."
  - Multiple Award Schedules (MAS)
    - Commercial services and products
  - Governmentwide Acquisition Contracts (GWACs)
    - Information Technology
  - Multiple Award Task & Delivery Order

What is an "Assisted Acquisition"?

- **DFARS 217.7801**

  "[A] contract awarded or a task or delivery order placed on behalf of DoD by a non-DoD agency."

  - Existing GSA contracts
  - Other agency contracts
  - New contract actions

Benefits of Interagency Acquisitions

- Leverages the Government's aggregate buying power
- Simplifies the method for procuring commonly used goods and services
- Improves efficiency and timeliness
- Plays a critical role in allowing agencies to accomplish their missions
- Streamlines the procurement process

Knowledge Test Questions

Fill in the Blank….

1)_____ Acquisitions" are orders issued by DoD personnel

2)_____Acquisitions" are orders issued by non-DoD federal entities on DoD's behalf

What are some benefits of using an interagency acquisition vehicle?

Fiscal Law Topics

- Compliance – Legislative Authority
- Key Fiscal Law Concepts:
  - Purpose – “Necessary Expense”
  - Time – “Bona Fide Need”
  - Amount – “Antideficiency Act”
- Funding Matrix
- Severability vs. Non-Severability

Compliance & Approach to Fiscal Law

- Authority –
  - Bona Fide Need: 31 U.S.C 1502 (a)
  - Anti-Deficiency: 31 U.S.C 1341-44, 1511 -17
  - Intended Purpose: 31 U.S.C 1301(a)

- Government agencies may only obligate funds to the extent *affirmatively authorized* by statute.

- Where the law is silent, presume that such use of appropriations is *prohibited*.

Basic Fiscal Controls - Purpose

- "Appropriations shall be applied only to the objects for which the appropriations were made"

- Statute prohibits:
  1. Charging authorized items to the wrong appropriation
  2. Charging unauthorized items to any appropriation

See 31 U.S.C. § 1301(a)

Anything less would render congressional control meaningless...

Basic Fiscal Controls – Purpose: The "Necessary Expense" Rule

- To determine whether the Purpose test has been met, an expenditure must be:
  1. Logically related (*necessary and incident*) to the appropriation;
  2. Not prohibited by law; and
  3. Not otherwise provided for; (i.e., it must not fall within the scope of some other appropriation)

See 29 Comp. Gen. 419, 421 (1950)

Basic Fiscal Controls - Purpose

- "Appropriations shall be applied only to the objects for which the appropriations were made"

- Statute prohibits:

Charging authorized items to the wrong appropriation

1. Charging unauthorized items to any appropriation

See 31 U.S.C. § 1301(a)

Anything less would render congressional control meaningless...

Basic Fiscal Controls – Purpose: The "Necessary Expense" Rule

- To determine whether the Purpose test has been met, an expenditure must be: Logically related (*necessary and incident*) to the appropriation;
  1. Not prohibited by law; and
  2. Not otherwise provided for; (i.e., it must not fall within the scope of some other appropriation)

See 29 Comp. Gen. 419, 421 (1950)

Basic Fiscal Controls - Time

- Appropriations are only available during a specified timeframe (*period of availability*)
- We cannot use this year's money to fund next year's requirement.

1. Basic Fiscal Controls – Time *Bona Fide Need* Rule

- Factors to consider when analyzing *bona fide* need for any given product or service:

  - Required delivery date;
  - When required Government Furnished Equipment (GFE), Government Furnished Material (GFM), and Government Furnished Information (GFI) is available;
  - Whether the government controls when the contractor may start work.

Severability Analysis - Services

- “Severable” services are continuing and recurring in nature, often involving the same service performed repetitively, such as LAN and helpdesk support, or other such ongoing services.

- “Non-Severable” services ultimately result in a single or unified outcome, product, or report (or other deliverable) at the conclusion of the service, such as a design for IT architecture.

Severable Services

- Severable services are the *bona fide* need of the fiscal year in which they are performed.
  - The general rule, derived from GAO decisions, is that agencies must use current funds to obtain current services

- Statutory exception:
  - 10 U.S.C. § 2410a for DoD) and 41 U.S.C. § 253 (for civilian agencies).

  - Permit award of services contracts that cross fiscal years, so long as the *period of performance does not exceed 12 months*.

Non-Severable Services

- Non-Severable services contracts are allowed to cross fiscal years.

- Generally, agencies must obligate funds for the entire undertaking at contract award, even though performance may occur during following fiscal years.

Basic Fiscal Controls - Amount

- The Antideficiency Act, 31 U.S.C. §§ 1341-44,1511-17,

  prohibits any government officer or employee from making or authorizing expenditures or including obligations:

  - *In excess* of the amount in an appropriation;

    § 1341(a)(1)(A)

  - *Before* an appropriation is made § 1341(a)(1)(B)

Obligation Availability

OR DO YOU KNOW WHEN YOUR FUNDS EXPIRE?

- O&M Funds
  - 1 Year
- R&D Funds
  - 2 Years
- Procurement Funds
  - 3 Years
- Military Construction
  - 5 Years

Expenditure Availability

OR DO YOU KNOW WHEN YOUR FUNDS CANCEL?

- All Funds Available for Expenditure for 5 Years After Obligation Period Ends
- After end of Expenditure Period…Funds Cancel and Are no Longer Available for Payment Purposes

DoD Policy For Interagency Agreements – Severable Services

<u>All future</u> funding documents must include the following statement:

- ***"These funds are available for services for a period not to exceed one year from the date of obligation and acceptance of this order. All unobligated funds shall be returned to the ordering activity no later than one year after the acceptance of the order or upon completion of the order, whichever is earlier."***

DoD Policy For Interagency Agreements - Goods

- When the order is placed by the assisting agency, there needs to be an expectation that the goods will be delivered by the end of the current fiscal year. While unforeseen delays may occur, there needs to be a reasonable basis for the expectation of current fiscal year delivery.

THE RULES FOLLOW THE MONEY

DoD Policy on Interagency Agreements

- DoD organizations may enter into interagency agreements with non-DoD Federal activities when:
  1. funding is available to pay for the support,
  2. the agreement is in the best interest of the Government,
  3. the supplying activity is able to provide the support,
  4. the support cannot be provided as conveniently or economically by a commercial enterprise, and;
  5. the agreement does not conflict with any other agency's authority.

- Determinations must be approved by the head of the major organizational unit ordering the support and must be attached to the agreement.

Knowledge Test Questions

Ms. Appropriation, a Contract Specialist is taking her final Fiscal Law exam.

She is asked to fill in the blank…

Appropriate Funds are subject to what

three (3) basic Statutory controls?

True or False?

The "*bona fide need*" rule means that the appropriation is available only for the needs of the current year.

Guidance in Utilizing Interagency Acquisition- Three Focus Areas

I. Acquisition Planning & Market Research
- Selection of Appropriate Method to Meet Requirement that is in the Best Interest of the Agency

II. Enhanced Competition
- Expanded Section 803

III. Compliance with Fiscal Law
- Bona Fide Need Rule
- Purpose, Time, Amount

I. Acquisition Planning & Market Research

DoD Memo – "Proper Use of Non-DoD Contracts" (10/2004)

- Must evaluate whether using a non-DoD contract is in the **best interest** of the DoD considering—
  - *Requirements*
  - *Schedule*
  - *Cost Effectiveness (including discounts and fees)*
  - *Contract Administration*
- Must ensure work is **within scope** of the contract vehicle
- Must provide **DoD-unique terms and conditions** to the assisting agency for incorporation

Why Market Research?

- Purpose: Picking the right tool for the right job.
  - Shapes the development of acquisition requirements & strategies
  - Supports active and good acquisition decision making
  - Facilitates acquisition documentation requirements
  - Mandates for assessing the commercial marketplace.
  - Leverages commercial products & services in solving complex acquisition challenges

- *Bottom Line ….Effective market research is plain good business sense!*

Who Should Be Involved?

- The key objective is to get quality market research. Focus on the what, not the who
- Assisting Agencies frequently take the lead for market research
- The model may differ for direct and assisted acquisitions
- For complex requirements, the involvement by subject matter experts is a key ingredient in market research

II. Enhanced Competition

Expanded Section 803 (FY02 National Defense Authorization Act (NDAA)

- Additional requirement for orders of services exceeding $100,000 ***using DoD funds***
- Expanded to supplies under Federal Supply Schedules (3/2006, DFARS 208.405-70)
- Also applies to orders placed by non-DoD agencies on behalf of DoD.
- CO must provide Fair Notice--
  - to as many Schedule contractors as practicable to reasonably ensure that offers will be ***received*** from at least 3 contractors,

DoD & GSA Joint Responsibilities

- Early and open communication
- Set realistic expectations for each other
- Continue collaboration at all levels
- Identify emerging issues

DoD Responsibilities

- Provide the right type of funds
- Ensure any agreements with assisting agencies are clear and concise
  - Include any unique terms and conditions (UID, Specialty Metals)
- Ensure that you and/or your assisting agency develop a requirements package to DoD standards
- Ensure that you and/or your assisting agency complete adequate acquisition planning
  - Market research
  - Validate contract scope
- Document your decisions

GSA Responsibilities

- Develop interagency agreements with DoD agencies that are specific, definite and certain
  - Ask for and incorporate any unique IA terms and conditions (ie. UID)
- Inspect and assist DOD agencies in developing complete requirement packages.
- Validate that the DOD agency requirement is within scope of the contract. If not, suggest alternatives.
- Make contract terms and conditions easily available. (GSA Action still needed)
- Ensure three or more bids are received (per Section 803 competition requirements)
- Properly code data in FPDS-NG and provide reports/data to requiring organizations for analysis.
- Charge reasonable fees

Knowledge Test Questions

Mr. Price is a DoD contracting officer.

He is considering whether or not to use a Non-DoD vehicle for a $200,000 services acquisition.

What should Mr. Price consider when making his decision?

Ms. Deal is a Contracting Officer for GSA.

As the assisting agency, what should she consider before placing a task order for

Training Resources

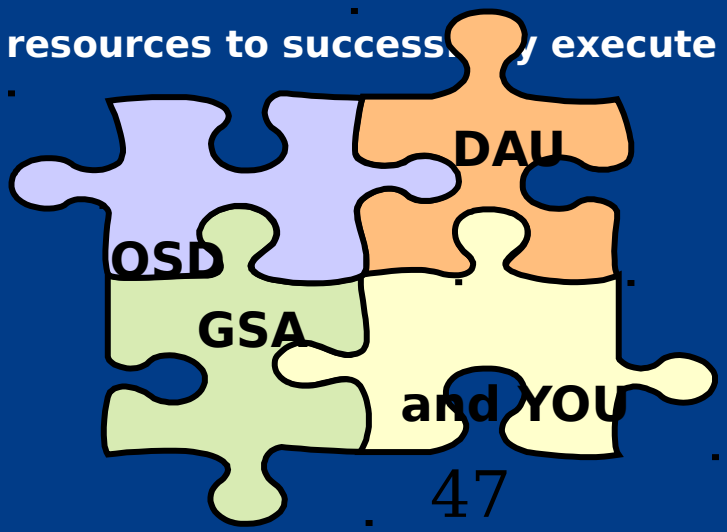
Interagency Acquisitions Community of Practice … Provides strategic Integration of policy information, tools, training courses and presentation slides

DPAP website … references to DoD policy memorandums, service specific policy implementation and related reports.

GSA Center for Acquisition Excellence …references to training, resources And expertise from peers and other professionals

GSA Policy Vault … provides policies and resources to successfully execute interagency acquisitions

Remember, the DoD supports the use of non-DoD contract vehicles … Please, use them properly!

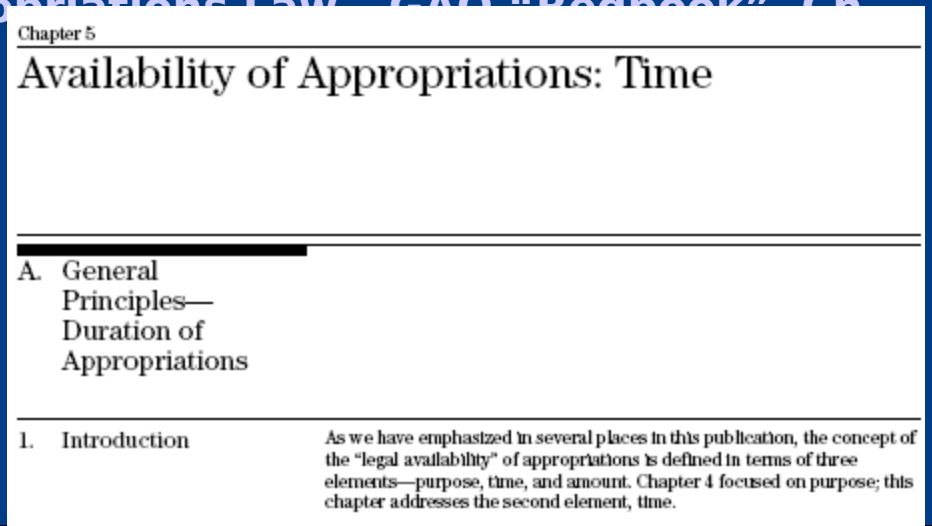


Learning Resources

- **GSA Center for Acquisition Excellence**
  - **Using GSA Schedules**
  - **GSA SmartPay - Purchase Card A/OPC On-line Training Program www.gsa.gov/aopcpurchasetraining**
  - **GSA SmartPay Purchase Card www.gsa.gov/sppurchaset**

- **Acquisition Planning Wizard** - http://apw.gsa.gov/Welcome.do
  - **APW training module** - APW v3.0 on-line learning Module

- **Principles of Federal Appropriations Law – GAO "Redbook" – Chapter 5**



Chapter 5

Availability of Appropriations: Time

A. General Principles—Duration of Appropriations

1. Introduction

As we have emphasized in several places in this publication, the concept of the "legal availability" of appropriations is defined in terms of three elements—purpose, time, and amount. Chapter 4 focused on purpose; this chapter addresses the second element, time.

Continuous Learning Modules

- DAU Continuous Learning Center
  - Section 803 Competition Requirements for Services (CL C017)
  - Proper Use of non-DoD Contracts (CLC010)
  - Ethics Training for Acquisition, Technology, & Logistics (CLM003 - (Registration for this course is required)
  - Market Research (CLC004)
  - Acquisition of Services (CLC014)
  - Performance-Based Services Acquisition (CLC013)

Contracting Community of Practice
https://acc.dau.mil/con

Additional Specific Topic Areas in the CON CoP include:

- Performance Based Acquisitions
- Market Research
- Acquisition Center of Excellence for Services
- Contingency Contracting
- Contracting Officers Representative
- Small Business
- Pricing and Negotiations

Summary

- ✓Defined Direct and Assisted Acquisitions
- ✓Reviewed federal fiscal law concepts.
- ✓Discussed DoD and GSA assisted acquisition policies.
- ✓Provided References For DoD and GSA personnel

Quote from Rep. Jim Moran (D – VA)

- "One of my strong recommendations…is to have a much greater reliance on GSA and the use of GSA Contracting Officers."

  Moran said in a speech at a conference in Crystal City, on June 21, 2007, that language may be added to the Defense Appropriations bill, to guide the DoD back to GSA. Reference the Federal Computer Week article.